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No. 71-1023

In the Supreme Court of the United States

OCTOBER TERM, 1971

ALBION CRANSON and JOSEPH J. KLOSTERMAN,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Following a jury trial in the United States District Court for the Eastern District of Virginia, petitioners were convicted of transporting stolen automobiles in interstate commerce and conspiracy to commit that offense, in violation of 18 U.S.C. 2312 and 371. Cranson was sentenced to three and one-half years' imprisonment, and Klosterman was sentenced to three years' imprisonment. The court of appeals affirmed (Pet. App. A).

The pertinent facts are not disputed. Petitioners were tried with David Chase, who was also convicted. Three other co-conspirators, Boyce James, Connie Sisson and David Sisson entered pleas of guilty and testified for the government.[1]

The evidence showed that petitioners participated in an interstate car theft operation involving high priced late model automobiles in the Ft. Lauderdale, Florida, area. Under the plan Cranson, who was operating an automobile agency in Pompano Beach, was to receive license numbers of cars and obtain from the Florida title bureau information about the car. The information was to be used to prepare forged title blanks also obtained by Cranson, and a new title and license plates then were to be sought in a different state. When the new title had been received, a car fitting the description on the title was to be stolen and sold, using the fraudulent registration, to car dealers in the Washington, D.C., area. A man identified as Mitchel[2] was to supply identification papers for the persons selling the cars. (Tr. 204-210, 219, 228-229, 372.)

Cranson contacted David Sisson about joining the scheme in February 1968 (Tr. 207-208). Sisson agreed and recruited Connie Sisson and Robert Pow-

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[1] Connie Sisson's name was Connie Scott at the time of trial. Another conspirator, Robert Poweleit, pleaded guilty subsequent to this trial.

[2] Petitioner Klosterman's full name is Joseph Mitchel Klosterman (Tr. 487) and he admitted doing busines in the name of Joseph Mitchel (Tr. 494).

eleit to assist in the operation (Tr. 210-212). He also helped Cranson procure a machine for preparing false serial number plates to use on the stolen cars (Tr. 217-218, 307-308).

Petitioner Klosterman enlisted Boyce James in April 1968 to steal cars for the operation, telling him that the conspirators had a machine for printing serial plates and that counterfeit titles would be obtained so that the cars could be resold in the Washington, D.C., area. James identified petitioners at trial and testified that he knew Klosterman as Joe Mitchel (Tr. 322-324).

The plan was put into operation in June 1968 (Tr. 215). About forty or fifty likely automobiles were located and, after their titles were checked, about half of them were selected as having suitably clear titles to be useful (Tr. 228-229, 372). James testified that a short time later he and Klosterman stole a 1967 Pontiac Bonneville from a dealership in Ft. Lauderdale. Cranson took David and Connie Sisson to a bar near Ft. Lauderdale, where they met James and the man they knew as "Joe Mitchel" (Tr. 222-224, 373-374). James changed the tags on the Bonneville and Connie and David Sisson were instructed by Cranson to drive the car to Arlington, Virginia (Tr. 224-226, 374-375). At trial, Connie Sisson identified Klosterman as the "Joe Mitchel" she had met at the Ft. Lauderdale bar (Tr. 222-224, 373-374). Defense counsel sought to question her out of the presence of the jury concerning any possible pretrial identification of Klosterman, which the trial judge refused to permit (Tr. 394-395, 40-45).

The Pontiac was subsequently sold to a dealer in the Washington, D.C., area (Tr. 231-232, 234, 375-377). Connie Sisson testified that she personally sold eight or nine stolen cars (Tr. 380). James admitted having stolen approximately twenty-four cars in five states for the operation. He received expense money from Cranson and false identification papers from Klosterman, and gave the sales proceeds to Cranson or Chase (Tr. 329-332, 335-337, 339). Cranson's fingerprints were on fraudulent Florida titles and on applications for Virginia titles for stolen cars. The true serial numbers of the stolen cars recovered matched the numbers for the cars described in the testimony (Tr. 467-470, 33-35, 37-38, 78, 80-82, 86-87, 99-100, 142-148, 157-159, 182-184).

Other witnesses also testified concerning the theft and purchase of various automobiles involved. George Betts stated that Cranson had offered him a job selling cars in October 1968. When Betts could not recall if Cranson had said that the cars were stolen, the government tried unsuccessfully to refresh his memory by reference to an F.B.I. interview in which Betts had so indicated. The trial judge overruled defense objections to the use of the interview for this purpose (Tr. 449-450). Kenneth Goode related that he bought a car, subsequently identified as stolen, from a man in June 1968. He said that he could not positively identify the man from whom he had purchased the car, but thought that Klosterman was the one (Tr. 160-161, 165-168). The government attorney stipulated that Goode had earlier picked Chase

from photographs as the man who had sold him the car. (Tr. 160-161, 165-168, 170, 178-179).

Klosterman, the only defendant to testify, denied having had anything to do with the auto theft ring. On cross-examination the government sought to impeach him by showing that in an interview with F.B.I. agents he had said that he knew of the operation and had been offered two thousand dollars a week to participate in it. Defense objections to this were overruled (Tr. 490-492, 513-516).

Petitioners reassert here the contentions raised in the court below. Petitioner Cranson argues that the use of prior statements in the unsuccessful attempt to refresh witness Betts' memory was improper (Pet. 18). Petitioner Klosterman contends that the trial judge erred in allowing evidence of the interview with F.B.I. agents to impeach his testimony (Pet. 29), and by refusing to conduct a hearing outside the presence of the jury concerning whether there had been pre-trial identifications by Connie Sisson (Pet. 22). These contentions are fully answered in the opinion below, on which we rely.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

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